

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDREAS PEFANIS, on behalf of himself and
others similarly situated,

Plaintiff,

Case No. 08-cv-002 (DLC)

- v. -

NOTICE OF MOTION

WESTWAY DINER, INC.,

Defendant.

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PLEASE TAKE NOTICE that upon the accompanying Memorandum Law and annexed materials, Defendant, by his undersigned attorneys, shall move the Court, before the Hon. Denise L. Cote, District Court Judge, at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York, on such day and time as counsel may be heard, for the following relief in this Fair Labor Standards Act ('FLSA') collective action and class action:

- (1) Decertification of the Rule 23 class pursuant to Rule 23 (c) (1) (C) of the Federal Rules of Civil Procedures;
- (2) Decertification of the FLSA collective action and dismissal of all opt-in plaintiffs' FLSA claims without prejudice to the filing of individual FLSA actions; or in the alternative
- (3) Partial summary judgment to redefine the Rule 23 class as excluding workers who have "opted-out" in writing.

Dated: April 30, 2009
Forest Hills, New York

MITCHELL & INCANTALUPO

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